



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0631; FRL-10010-11-Region 4]

Air Plan Approval; TN; Nitrogen Oxides SIP Call Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision concerning nitrogen oxides (NO_x) emissions submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated December 19, 2019, which revises the Tennessee Air Pollution Control Rule (TAPCR) titled “NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines” (TN 2017 NO_x SIP Call Rule) to correct the definition of “affected unit” and to clarify requirements related to stationary boilers and combustion turbines. EPA is also proposing to convert the conditional approval of the TN 2017 NO_x SIP Call Rule to a full approval.

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2018-0631 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Gobeail McKinley, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9230. Ms. McKinley can also be reached via electronic mail at mckinley.gobeail@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution

and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone” (“NOx SIP Call”). The NOx SIP Call required eastern states, including Tennessee, to submit SIPs that prohibit excessive emissions of ozone season NOx by implementing statewide emissions budgets.¹ The NOx SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was designed to mitigate the impact of transported NOx emissions, one of the precursors of ozone. EPA developed the NOx Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NOx SIP Call. This trading program allowed the following sources to participate in a regional cap and trade program: generally electric generating units (EGUs) with capacity greater than 25 megawatts (MW); and large industrial non-EGUs, such as boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr). The NOx SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

On January 22, 2004, EPA approved into the Tennessee SIP the State’s NOx Budget Trading Program rule.² The NOx Budget Trading Program was implemented from 2003 to 2008. The provisions required EGUs and large non-EGUs in the state to participate in the NOx Budget Trading Program.

In 2005, EPA published the Clean Air Interstate Rule (CAIR), which required eastern states, including Tennessee, to submit SIPs that prohibited emissions consistent with ozone season (and annual) NOx budgets. *See* 70 FR 25162 (May 12, 2005). CAIR addressed the good

¹ *See* 63 FR 57356 (October 27, 1998). As originally promulgated, the NOx SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule’s provisions with respect to that standard. *See* 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

² *See* 69 FR 3015 (January 22, 2004).

neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM_{2.5}) NAAQS and was designed to mitigate the impact of transported NOx emissions with respect to not only ozone but also PM_{2.5}. CAIR established several trading programs that EPA implemented through federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state, but not large non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and/or other types of sources.³ When the CAIR trading program for ozone season NOx was implemented beginning in 2009, EPA discontinued administration of the NOx Budget Trading Program; however, the requirements of the NOx SIP Call continued to apply.

On August 20, 2007, EPA approved into the Tennessee SIP an abbreviated CAIR SIP revision with allowance allocations and opt-in provisions.⁴ On November 25, 2009, EPA approved into the Tennessee SIP a further abbreviated CAIR SIP revision expanding applicability of the CAIR ozone season NOx trading program to NOx SIP Call non-EGUs.⁵

In 2011, EPA published the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address the good neighbor provisions for the 1997 ozone NAAQS, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS. *See* 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in eastern states, including Tennessee, to meet annual and ozone season NOx emission budgets and annual SO₂ emission budgets implemented through new trading programs. Implementation of CSAPR began on January 1, 2015.⁶ CSAPR also contained provisions that

³ CAIR had separate trading programs for annual sulfur dioxide emissions, seasonal NOx emissions and annual NOx emissions.

⁴ *See* 72 FR 46388.

⁵ *See* 74 FR 61535.

⁶ *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

would sunset CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements.

In 2016, EPA published the CSAPR Update to address the good neighbor provision for the 2008 ozone NAAQS. *See* 81 FR 74504 (October 26, 2016). Although for most covered states the CSAPR Update may only partially address the states' good neighbor obligations for this NAAQS, the rule fully addresses Tennessee's good neighbor obligation for this NAAQS.⁷ The CSAPR Update trading program replaced the original CSAPR trading program for ozone season NO_x for most covered states. Tennessee's EGUs participate in the CSAPR Update trading program, generally also addressing the state's obligations under the NO_x SIP Call for EGUs. However, Tennessee has not chosen to expand applicability of the CSAPR Update trading program to its large non-EGUs.

Through a letter to EPA dated February 27, 2017,⁸ Tennessee provided a SIP revision to incorporate a new provision – TACPR 1200-03-27-.12, “NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines” (TN 2017 NO_x SIP Call Rule) – into the SIP. The TN 2017 NO_x SIP Call Rule established a state control program for sources that are subject to the NO_x SIP Call, but not covered under CSAPR or the CSAPR Update. The TN 2017 NO_x SIP Call Rule contains several subsections that together comprise a non-EGU control program under which Tennessee will allocate a specified budget of allowances to affected sources.

Subsequently, on May 11, 2018 and October 11, 2018, Tennessee submitted letters requesting conditional approval of the 2017 NO_x SIP Call Rule and committing to provide a SIP revision to

⁷ *See* 81 FR at 74540. EPA notes that the aspects of the CSAPR Update affecting Tennessee were not challenged in the litigation over the rule and are not affected by the remand of the rule in *Wisconsin v. EPA*, 983 F.3d 303 (D.C. Cir. 2019).

⁸ EPA notes that it received the submittal on February 28, 2017.

EPA by December 31, 2019, to address a deficiency by revising the definition of “affected unit” to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. Based on the State’s commitment to submit a SIP revision addressing the identified deficiency, EPA conditionally approved the February 27, 2017, submission. In the same action, EPA approved removal of the state’s NOx Budget Trading Program and CAIR rules from the State’s SIP. *See* 84 FR 7998 (March 6, 2019).

II. EPA’s Proposed Action

EPA is proposing to approve Tennessee’s December 19, 2019, SIP submittal, which revises TAPCR 1200-03-27-.12, “NOx SIP Call Requirements for Stationary Boilers and Combustion Turbines” to correct the definition of “affected unit” and to clarify requirements related to stationary boilers and combustion turbines (additional details are provided in section III of this proposal). In addition, EPA is proposing to convert EPA’s March 6, 2019, conditional approval to a full approval.

III. Tennessee’s SIP submission and EPA’s analysis

In accordance with its commitment letters, Tennessee submitted a SIP revision on December 19, 2019, requesting EPA approval of revisions to TAPCR 1200–03–27–.12, “NOx SIP Call Requirements for Stationary Boilers and Combustion Turbines.” To address the deficiency in the TN 2017 NOx SIP Call Rule identified by EPA, in the December 19, 2019 submission, the State revises the definition of “affected unit” to remove the unqualified exclusion for any unit that serves a generator that produces power for sale and add exclusions for units that are subject to the current CSAPR Update trading program for ozone season NOx. In addition, Tennessee is requesting EPA approve the following modifications to the rule: (1) amending the

definition of “maximum design heat input” by adding “MM” to “BTU/hr” to correct a minor typo; (2) clarifying the formula for the allocation of NO_x allowances to include the number of hours in Tennessee’s ozone season; and (3) clarifying the requirements for a Responsible Official for purposes of compliance with 40 CFR Part 75.⁹

EPA has reviewed the December 19, 2019, SIP submission and is proposing to find that the revisions to TAPCR 1200–03–27–.12 comply with the NO_x SIP Call requirements for non-EGUs and the CAA. With respect to the changes to the definition of “affected unit,” if approved, Tennessee’s SIP will address all types of sources that must be covered to fully address NO_x SIP Call requirements. *See* 83 FR 64497 (December 17, 2018) (including a discussion of both sources covered under CSAPR and the sources subject to 1200–03–27–.12). With respect to the additional modifications to correct minor typographical errors, the formula for NO_x allocations, and the requirements for the Responsible Official, EPA preliminarily agrees that the modifications provide additional clarity to the SIP. In addition, EPA has preliminarily determined that the December 19, 2019, SIP revision satisfies the conditions listed in EPA’s March 6, 2019 conditional approval and is proposing to convert its prior conditional approval to full approval.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference TAPCR 1200-03-27-.12, “NO_x SIP Call Requirements for

⁹ In addition, EPA is proposing to approve TAPCR 1200–03–27–.12(7)(b)4, which currently reads [Reserved] and thus has no substantive requirements, into the SIP. TAPCR 1200–03–27–.12(7)(b)4 has not previously been approved into the Tennessee SIP. *See* 84 FR 7998 (March 6, 2019).

Stationary Boilers and Combustion Turbines,” state effective December 12, 2019, which revises Tennessee’s state control program to comply with the obligations of the NO_x SIP Call. EPA has made and will continue to make the State Implementation Plan generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve Tennessee’s December 19, 2019, submission, which revises TAPCR 1200-03-27-.12, “NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines,” to correct the definition of “affected unit” and to clarify requirements related to stationary boilers and combustion turbines. In addition, EPA is proposing to convert the March 6, 2019 conditional approval of TAPCR 1200-03-27-.12 to a full approval. EPA requests comment on these proposals.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 29, 2020.

Mary Walker,
Regional Administrator,
Region 4.

[FR Doc. 2020-12141 Filed: 6/5/2020 8:45 am; Publication Date: 6/8/2020]